

Calendar No. 235

105TH CONGRESS } 1st Session }	SENATE	{ REPORT 105-122
-----------------------------------	--------	------------------------

EMERGENCY STUDENT LOAN CONSOLIDATION ACT OF 1997

OCTOBER 29, 1997.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1294]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1294) to amend the Higher Education Act of 1965 to allow the consolidation of student loans under the Federal Family Education Loan Program and the Direct Loan Program, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

CONTENTS

	Page
I. Introduction .....	1
II. Purpose and summary of the bill .....	3
III. Background and need for legislation .....	4
IV. Legislative history and committee action .....	5
V. Committee views .....	5
VI. Cost estimate .....	8
VII. Application of law to the legislative branch .....	11
VIII. Regulatory impact statement .....	11
IX. Section-by-section analysis .....	11
X. Additional views .....	13
XI. Changes in existing law .....	14

I. INTRODUCTION

One of the most pressing challenges facing American families is the cost of paying for higher education. The benefits of higher edu-

cation are strikingly clear. Recent research indicates that individuals with a bachelor's degree earn more than one and a half times as much as a person with a high school diploma. But this is not the end of the story. In 1996, the unemployment rate for high school graduates was 4.7 percent. The unemployment rate for college graduates was 2.4 percent. These rates declined further with each additional level of education.

The College Board reports, however, that tuition at 4-year private institutions has risen by 89 percent over the past fifteen years while median family income has risen by only 5 percent. Students are responding by borrowing at record levels—in fact, student borrowing under Title IV since 1990 exceeds student borrowing in the 1960's, 1970's and 1980's combined. Between 1993 and 1995, graduate and professional student borrowing increased by over 74 percent.

#### STUDENT LOAN CONSOLIDATION

In order to ease the burden of repaying these debts, Congress created the student loan consolidation program. This program allows students to consolidate their student loans into a single loan that has a variety of repayment options that can reduce monthly payments, improve monthly cash flow, allow borrowers to pursue lower paying careers, or accommodate temporary financial setbacks. In many instances, the reduction in the payments possible under a consolidated loan allows borrowers to qualify for other credit such as home mortgages.

Current law allows students to consolidate all of their Federal Direct Loan Program (FDLP) loans and their Federal Family Education Loan Program (FFELP) loans into a Federal Direct Loan Program consolidation loan administered by the Department of Education. A student may consolidate his or her FFELP loans into a FFELP consolidation loan but may not consolidate his or her direct loans into the FFELP Program. As a result, borrowers who wish to consolidate both FDLP loans and FFELP loans into a single loan must go to the Department of Education's Direct Loan Consolidation Program. On August 26, 1997, the Department of Education announced that it had accumulated a backlog of 84,000 applications and that no new applications would be accepted until this backlog was eliminated.

#### HOPE TAX CREDIT AND LIFETIME LEARNING TAX CREDIT

The Taxpayer Relief Act of 1997 contained educational tax credits designed to help students and their families pay for the rising cost of higher education. Under current law, the need analysis formula will consider students and their parents who receive the tax credit as having greater resources to pay for college, thereby reducing their eligibility for student financial aid. As a result, students and their families will find their Federal financial aid reduced and that the amount they expended for higher education remained relatively unchanged by the educational tax credits. If a change in the need analysis formula is not made, approximately 69,000 individuals will lose as much as \$120 million in student financial aid.

## II. PURPOSE AND SUMMARY OF THE BILL

The purpose of S. 1294, "The Emergency Student Loan Consolidation Act of 1997", is to amend the Higher Education Act of 1965 to allow, for one year, the immediate consolidation of loans made under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program by FFELP lenders. In addition, the bill amends the Higher Education Act to exclude the Hope and Lifelong Learning tax credits from any consideration during financial aid need analysis in order to allow eligible students and their families to benefit fully from both the tax credit and the Federal student aid programs.

### A. LOAN CONSOLIDATION

On August 25, 1997, the Department of Education announced that it had suspended acceptance of new Direct Loan consolidation loan applications. At the time of the shutdown, the Department had built up a backlog of 84,000 applications for loan consolidation. In addition, students whose applications were being processed were experiencing delays of six months or longer and errors were being made in the payoff amounts. The problem is being compounded by the fact that approximately 12,000 students are being turned away from the program each month while the Department works to correct the problems with the program. This legislation will temporarily allow students to seek relief by consolidating their Direct Loans through the FFELP program.

The consolidation provision contains language which reflects a bipartisan commitment to non-discrimination in the student loan programs. Eligible lenders may not discriminate against any borrower based upon the number or type of eligible student loans the borrower seeks to consolidate, the type of institution that the borrower attended, the interest rate that is authorized to be collected, or with respect to the types of repayment schedules. Lenders may continue to offer programs to encourage borrower financial responsibility, but they must offer these programs to all borrowers who qualify. Language is also included providing eligible lenders time to adjust their computer systems to accommodate the change to the new interest rate.

### B. HOPE TAX CREDIT AND LIFETIME LEARNING TAX CREDIT

The Taxpayer Relief Act of 1997 contained two educational tax credits designed to help students and their families pay for the cost of higher education. The need analysis system that is currently used to calculate eligibility for Federal student financial aid will consider those who receive the credit as having greater resources to pay for college and they will be eligible for less student aid. The Emergency Student Loan Consolidation Act of 1997 would amend the Higher Education Act to exclude the tax credit from any consideration in need analysis thus allowing eligible students to benefit fully from both the tax credit and the Federal student aid programs. Any effort to remedy this problem after December 1, 1997, will require an offset of approximately \$120 million.

### III. BACKGROUND AND NEED FOR LEGISLATION

On August 10, 1993, the Student Loan Reform Act of 1993, contained within the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), amended the Higher Education Act to allow the Department of Education to establish a Federal Direct Loan consolidation loan program. Section 428C(b)(5) of the Higher Education Act required that the Department offer these loans only if it had the necessary origination and servicing arrangements in place. The Direct Loan consolidation loan program, however, has proven difficult to administer.

In September 1997, Thomas R. Bloom, Inspector General at the Department of Education, testified before the House Committee on Education and the Workforce regarding the circumstances which led to the temporary suspension of student loan consolidations under the Federal Direct Loan Program. Mr. Bloom testified that in 1995 the Department of Education awarded a contract to EDS to develop and operate a new system for the origination and consolidation of student loans. He stated that problems have been readily apparent with this contract since its inception. The contract called for EDS to begin consolidating loans on January 15, 1996. EDS failed to meet the start-up date and the Department extended the deadline to the end of February 1996. EDS failed to meet this new start-up date and the Department extended the deadline to May 1996. When it became clear that EDS would not meet this deadline, the Department mandated a change in the management of the contract. EDS began consolidating its first student loans on September 16, 1996.

On July 3, 1997, the Independent Quality Control Unit set up by EDS reported that a guaranty agency had been overpaid by \$900,000 as a result of a systems error which led to duplicate payments being made for loans being consolidated. According to the inspector general the Department halted the consolidation process for several weeks while this systems problem was analyzed and addressed. One month later, Sallie Mae, a financial services organization which funds approximately 40 percent of all insured loans, reported to the Department of Education that it was receiving duplicate payments from the Department for consolidated loans.

On July 22, 1997, the inspector general sent an action memorandum to the Assistant Secretary for Postsecondary Education indicating that borrowers wishing to consolidate their loans were unable to reach the customer service staff at EDS. One month later EDS also reported problems with the consolidation system and made recommendations for improvements in the process. The inspector general reported that in August 1997 the Department was aware of four major unresolved problems with EDS's system: (1) duplicate verification certificates resulting in double pay-offs of loans; (2) data entry errors; (3) borrowers being double billed for old and consolidated loans; and (4) a significant backlog of applications.

On August 26, 1997, the Department announced that it had accumulated a backlog of 84,000 applications for student loan consolidations and that it would not accept new applications for loan consolidation until the backlog was eliminated. Acting Deputy Sec-

retary of Education Marshall Smith testified before the House Education and the Workforce Committee that the problems were due to unanticipated application volume and an over reliance upon automated systems. The original contract, consistent with the experience of the previous contractor, estimated volume at 6,000 applications per month. Actual application volume is closer to 12,000 per month. At the time of the shutdown, EDS had booked 54,000 consolidation loans at an average of 4,500 per month.

Acting Deputy Secretary Smith stated that he anticipated that the backlog would be eliminated no later than December 1, 1997. The Department has noted, however, that interest in the consolidation program has been substantially higher than anticipated. Upon reopening the program, the contractor may face a disabling surge of consolidation loan applications as an estimated 36,000 students who have been turned away from the program since August 26, seek the benefits of student loan consolidation. In addition, more than 40 percent of the backlog is being eliminated by the withdrawal or deactivation of applications. The Emergency Student Loan Consolidation Act of 1997 will allow lenders within the FFELP program to assist the Department by authorizing FFELP lenders to consolidate loan portfolios containing both FFELP and FDL loans.

The legislation also contains language supported by the committee and requested by the administration that would adjust the need analysis formula so that students will be able to receive the education tax credits that were authorized through The Taxpayer Relief Act of 1997 and their full student financial aid benefits. This change will affect approximately 69,000 students. Failure to act prior to December 1, 1997, will have budget scoring consequences in future years.

#### IV. LEGISLATIVE HISTORY AND COMMITTEE ACTION

S. 1294, the "Emergency Student Loan Consolidation Act of 1997" was introduced by Senator James M. Jeffords on October 9, 1997. S. 1294 is the companion legislation to H.R. 2535.

On October 22, 1997, the Labor and Human Resources Committee met to consider S. 1294. Senator Jeffords offered an amendment in the nature of a substitute. The legislation was adopted by a voice vote.

#### V. COMMITTEE VIEWS

The committee is deeply disappointed by the suspension of the Federal Direct Loan Consolidation Program. Eighty-four thousand student borrowers were left without any options as the Department of Education struggled to provide the services that had been promised to these borrowers. Students whose applications were caught within the system experienced unnecessary hardship while trying to responsibly reduce their monthly payments. Students who accepted forbearance in order to avoid falling into default while waiting to consolidate their loans incurred unnecessary additional interest charges. Regrettably it may never be clear just how much this situation has cost the borrowers trapped within the consolidation system.

The Department will face three significant challenges when it reopens the Federal Direct Lending consolidation program. First, it has reduced its backlog by deactivating the applications of students who fail to respond to any of the consolidation steps within two weeks. To date, more students have withdrawn their applications or had their loans deactivated than have had them fully consolidated. It is not clear when these students will attempt to reenter the system. In addition, prior to the suspension of the program, 12,000 students per month applied to the Department for loan consolidation. The consolidation needs of these students have not been met, and it is not clear how quickly they will attempt to consolidate their loans when the program reopens for new applications. And finally, the Class of 1997 has just begun to make payments upon their student loans. There may be an additional increase in applications over the next several months as these students attempt to cope with their student debt. The Department may face a backlog in applications similar to that which led to the original shutdown of the system.

The committee believes that it can best meet the urgent needs of these students by allowing expansion of loan consolidation in the Federal Family Education Loan Program until October 1, 1998. Enactment of S. 1294 will reduce pressure upon the Education Department's system and provide students with new options for loan consolidation.

#### LOAN CONSOLIDATION REPORTS

The committee greatly appreciates the cooperation shown by the Department of Education in providing biweekly reports of the Department's efforts to reduce the backlog of borrowers seeking to consolidate their loans. The committee requests that the Department continue to provide biweekly reports to the Senate Committee on Labor and Human Resources and the House Committee on Education and the Workforce on the Department's efforts to manage the Federal Direct Loan Program consolidation loan program. These biweekly reports shall include, at a minimum: a) the number of applications received, b) the number of loans booked, c) the number of applications withdrawn, d) the number of applications deactivated, and e) the size, if any, of the backlog in applications.

#### TERMS OF CONSOLIDATION LOANS

The Higher Education Act of 1965 prohibits direct student loan borrowers from consolidating their direct student loans into FFELP loans. Even if current law permitted these consolidations, few students would be likely to take them because they would lose the deferment benefits attached to their subsidized loans and would pay a higher interest rate.

To address these issues, the Emergency Student Loan Consolidation Act of 1997 will temporarily permit students to consolidate their direct student loans into FFELP loans. In addition, the bill will change the interest rate calculation for FFELP consolidation loans so that the formula for calculating the interest rate on Federal Direct Loan consolidation loans and FFELP consolidation loans is the same.

In addition, borrowers who consolidate subsidized loans, whether from the Direct Loan Program or the FFELP program will not lose their deferment benefits. During periods of deferment, the Secretary will pay the interest on the loans which were eligible for an interest subsidy prior to the consolidation and the borrower will only be responsible for the interest on the loans included in the consolidation which were not eligible for an interest subsidy under Section 428 or Section 455 of the Higher Education Act.

#### NON-DISCRIMINATION IN LOAN CONSOLIDATION

In an effort to address the concerns of the Administration and others, the committee approved language within Section 2(c)(6) which would protect borrowers who were applying for consolidation loans from discrimination based upon the type and number of eligible student loans the borrower seeks to consolidate; the institution the borrower attended, the interest rate that is authorized to be collected or the types of repayment schedules offered to the borrower. Lenders may continue to offer special benefit programs and programs to encourage borrower financial responsibility; however, they must offer these programs to all borrowers who qualify. Nothing in this bill shall be interpreted to supersede requirements placed upon eligible lenders by the Department of the Treasury.

#### SYSTEM DEVELOPMENT TIME

The Emergency Student Loan Consolidation Act changes the interest rate calculation for FFEL program consolidation loans. The legislation states that a consolidation loan for which the application is received on or after the date of enactment and before October 1, 1998, shall bear interest at the equivalent of the 91-day Treasury Bill rate plus 3.1 percent with a cap of 8.25 percent. In order to allow eligible lenders adequate time to make needed changes in their computer systems while serving students, the bill allows a lender to continue to calculate interest on the loan at the rate previously in effect and defer, until April 1, 1998, the recalculation of interest, if the recalculation is applied retroactively to the date on which the loan is made. The borrower will be held harmless through this calculation.

#### REAUTHORIZATION OF THE HIGHER EDUCATION ACT

The Emergency Student Loan Consolidation Act of 1997 provides temporary authority for eligible FFELP lenders to consolidate student loan packages which contain direct loans. It is intended to provide immediate relief to students who are unable to consolidate their student loans as a result of the suspension of the Department of Education's loan consolidation program.

The committee has developed legislation designed to make the minimum changes to current law that is necessary to provide immediate relief to students. As a result, a number of important, complex, and substantive issues pertaining to the consolidation of student loans have been deferred for consideration during the reauthorization of the Higher Education Act. Some of these issues, like the consolidation of defaulted student loans, will require careful

analysis to fully assess the costs and benefits to students and the student loan programs.

## VI. COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 23, 1997.*

Hon. JAMES M. JEFFORDS,  
*Chairman, Committee on Labor and Human Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1294, the Emergency Student Loan Consolidation Act of 1997, as ordered reported from the Senate Committee on Labor and Human Resources on October 22, 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Kalcevic for Federal costs and Marc Nicole for State and local government impacts.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

#### *S. 1294—Emergency Student Loan Consolidation Act of 1997*

Summary: S. 1294 would amend the Higher Education Act of 1965 to make four changes. The bill would: give lenders authority until October 1, 1998, to allow student loan borrowers to include federal direct student loans in a federally guaranteed consolidated loan; change until October 1, 1998, the terms of federally guaranteed consolidated loans related to federal interest subsidies and loan interest rates; reduce the student loan administrative entitlement fund from \$532 million to \$507 million in 1998; and amend the eligibility criteria for student financial aid to adjust the formulas for recent changes in the tax law.

CBO estimates the provisions of S. 1294 would increase federal outlays by \$12 million in 1998 but have a negligible budgetary impact over the 1998–2002 period.

S. 1294 contains no intergovernmental mandates as defined in the Unfunded mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. In addition, enactment of this bill would impose no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of these proposals over the 1998–2002 period is shown in the following table. The budgetary effects through 2007 are displayed in the section on pay-as-you-go considerations. The budgetary impact of S. 1294 falls within budget function 500 (education, training, employment, and social services).



ESTIMATED BUDGETARY IMPACT OF S. 1294 AS ORDERED REPORTED BY THE SENATE COMMITTEE  
ON LABOR AND HUMAN RESOURCES

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING						
Student loan consolidations:						
Budget authority .....		25				
Estimated outlays .....		25				
Student loan administration:						
Estimated budget authority .....		-25				
Estimated outlays .....		-13	-8	-3	-1	
Total changes:						
Estimated budget authority .....		0				
Estimated outlays .....		12	-8	-3	-1	

*Basis of estimate*

*Student loan consolidations*

In the student loan programs, borrowers have the option of combining their debt from several different federal student loan programs into one loan, which usually has extended repayment terms. Guaranteed consolidated student loans are made by private lenders and are reinsured by the federal government. Direct consolidated student loans are made directly by the federal government. The two programs are similar in many but not all respects. This bill would make three temporary changes to the guaranteed student loan consolidation program in order to make it more comparable to the direct student loan consolidation program. These changes would be in effect for new consolidated loan applications from the date of enactment of this bill until October 1, 1998.

First, the bill would make borrowers eligible to include direct student loans in their guaranteed consolidated student loan. Under current statute, borrowers with both guaranteed and direct student loans can only combine their debt into a direct consolidated student loan.

Second, the bill would allow students to retain their interest subsidy benefits on all subsidized loans included in the new consolidated loan. This provision is already a feature of the direct consolidated student loan program. Currently, borrowers with guaranteed consolidated student loans retain subsidy benefits only if they combine only subsidized student loan debt.

Third, the bill would make the interest rate on guaranteed consolidated loans the same as for direct consolidated loans. Under current law, the interest rate on a guaranteed consolidated loan is a fixed rate based on the weighted average of the interest rates of the loans consolidated rounded upward to the next whole percent, capped at 9 percent. Under this bill the interest on the loans would be a variable interest rate capped at 8.25 percent.

The effect of these changes on the demand for guaranteed consolidated student loans would depend on how widely private lenders market the loans and whether the current problems that have caused the temporary shutdown of the direct consolidated student loan program persist. Assuming an enactment date of November 1, 1997, this cost estimate reflects the assumption that the proposals

would increase guaranteed consolidated student loan volume by approximately 10 percent in 1998, or by about \$400 million, resulting in increased subsidy costs of \$25 million.

*Administrative entitlement fund*

Under S. 1294, the Department of Education's section 458 capped administrative entitlement fund would be reduced by \$25 million in fiscal year 1998 from \$532 million to \$507 million. Outlays savings would reflect the current pattern of spending for the program.

*Eligibility requirements for student financial aid*

S. 1294 would change the current federal formula for calculating the expected family contribution (EFC) towards a student's cost of higher education. The EFC is used to determine eligibility for federal Pell grants and subsidized student loans. This bill would permit families to count any Hope Credit or Lifetime Learning Credit—enacted as part of the Taxpayer Relief Act of 1997—as an allowance against their income in determining the amount of their EFC. Without these changes, families would be expected to contribute more to their education in an amount equal to the tax credits, in effect eliminating any beneficial effects to those families receiving credits. These changes would be effective for determining Pell grant and subsidized loan eligibility beginning in academic year 1999–2000.

CBO is currently unable to estimate the impact of these provisions on the costs of student loans. The exclusion of the Hope and Lifetime Learning Credits from the EFC could affect the amount of subsidized borrowing, but CBO has insufficient data to provide an estimate.

Under current law, the Pell grant program is not authorized for academic year 1999–2000 and beyond, the years in which these tax credits would be in effect. However, if these provisions were to be in effect for academic year 1998–99 and the maximum grant award were \$3,000, Pell program costs would increase by about \$100 million, subject to appropriation of the necessary funds.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 establishes pay-as-you-go procedures for legislation affecting direct spending or receipts. The projected changes in direct spending are shown in the table below for fiscal years 1998–2007. For purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the succeeding four years are counted.

SUMMARY OF PAY-AS-YOU-GO EFFECTS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Changes in outlays .....	12	–8	–3	–1	0	0	0	0	0	0
Changes in receipts .....	Not applicable.									

Estimated impact on State, local, and tribal governments: S. 1294 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: Enactment of this bill would impose no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal cost, Deborah Kalcevic and Justin Latus; impact on State, local, and tribal governments, Marc Nicole; and impact on private sector, Nabeel Alsalam.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

## VII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

S. 1294 amends the Higher Education Act of 1965 to allow the consolidation of student loans under the Federal Family Loan Program and the Federal Direct Loan program and as such has no application to the legislative branch.

## VIII. REGULATORY IMPACT STATEMENT

The committee has determined that there will be only a negligible increase in the regulatory burden of paperwork as a result of this legislation.

## IX. SECTION-BY-SECTION ANALYSIS

Section 1 of the bill includes the short title of the legislation, the “Emergency Student Loan Consolidation Act of 1997” and clarifies that except as expressly provided, references to amendments or repeals in this act refer specifically to sections or provisions of the Higher Education Act of 1965.

Section 2(a) of the bill amends section 428C(a)(4) to include in the definition of loans eligible for consolidation loans made under part D of this title, except that loans made under such part shall be eligible for consolidation loans for which the application is received by an eligible lender during the period beginning on the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and ending on October 1, 1998.

Section 2(b) provides for terms of consolidation loans by amending section 428C(b)(4)(C)(ii) so as to include those consolidation loans “for which the application is received by an eligible lender before the date of enactment of the Emergency Student Loan Consolidation Act of 1997 or on or after October 1, 1998” and by inserting a new subclause (II) which provides that interest shall accrue and be paid “by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender on or after the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and before October 1, 1998, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 428 or Federal Direct Stafford Loans for which the borrower received an interest subsidy under section 455.” The borrower shall only be responsible for the interest on the loans included in the consolidation loan which were not eligible for an interest subsidy under Section 428 or Section 455 of the Higher Education Act.

Section 2(c) includes a section on nondiscrimination in loan consolidation whereby eligible lenders are prohibited against discriminating against any borrower (A) based on the number and type of

eligible student loans; (B) based on the type or category of institution of higher education that the borrower attended; (C) based on the interest rate that is authorized to be collected with respect to the consolidation loan; or (D) with respect to the types of repayment schedules offered to such borrowers. Lenders may continue to offer programs to encourage borrower financial responsibility. Nothing in this bill shall be interpreted to supersede requirements placed upon eligible lenders by the Department of the Treasury.

Section 2(d) amends section 428C(c)(1) by adding a new subparagraph (D) relating to interest rates: “A consolidation loan for which the application is received by an eligible lender on or after the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and before October 1, 1998, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 427A(f), except that the eligible lender may continue to calculate interest on such a loan at the rate previously in effect and defer, until not later than April 1, 1998, the recalculation of interest on such a loan at the rate required by this subparagraph if the recalculation is applied retroactively to the date on which the loan is made.” This section provides eligible lenders time to reprogram their systems to accommodate the change in interest rate calculations while providing students with the full benefits of the interest rate cap.

Section 2(e) provides that consolidation loans authorized by the amendments made in this section shall be available notwithstanding any pending application by a student for a consolidation loan under part D of title IV of the Higher Education Act of 1965, upon withdrawal of such application by the student at any time prior to the receipt of such a consolidation loan.

Section 3 of the bill provides that funds necessary to pay for the costs associated with the legislation will be paid for from administrative expense reductions in section 458 decreasing that account from \$532,000,000 to \$507,000,000.

Section 4 of the bill includes provisions relating to the treatment of tax benefits so as to exclude the tax credit taken by the parent under section 25A of the Internal Revenue Code of 1986 from consideration in need analysis for student contributions from available income, family contributions for independent students without dependents other than a spouse, family contributions for independent students with dependents other than a spouse and from total income.

X. ADDITIONAL VIEWS OF MR. KENNEDY, MR. DODD, MR. HARKIN, MS. MIKULSKI, MR. BINGAMAN, MR. WELLSTONE, MRS. MURRAY, AND MR. REED

The Democratic members of the Senate Labor and Human Resources Committee all voted in favor of the bill. All members of the Committee are concerned about the plight of the borrowers who are unable to consolidate their loans. We also feel strongly that the change in need analysis is essential to allow lower-income students to benefit from the Hope and Lifelong Learning tax credits.

We are concerned, however, about two aspects of the Chairman's amendment in the nature of a substitute. While the Chairman's amendment partially addresses our concerns on non-discrimination, we are concerned that the bill does not go far enough. The minority is very concerned that, over time, the FFELP lenders may "cream" the best loans and not consolidate loans from the higher risk borrowers, those who often need consolidation the most. We note that two-thirds of the borrowers affected by the backlog had only FFEL loans and no Direct Loans, so that they are not precluded by current law from consolidating their loans into the FFEL program.

We are also concerned that the offset for the consolidation provisions in this bill comes from the Department of Education's administrative account under section 458. This offset violates the budget agreement and does not meet the "pay as you go" requirements. The number of loans to be serviced in the Direct Loan program will increase by more than 40 percent from FY 1997 to FY 1998. The Direct Loan administrative costs will rise accordingly, but this amendment cuts the funds available to service those loans. We are concerned that, in "solving" the consolidation problem, the bill may create more administrative problems by weakening the Department's ability to administer the student loan programs. We note that the majority indicated a willingness to address this concern as the bill moves forward.

EDWARD M. KENNEDY.

## XI. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### HIGHER EDUCATION ACT OF 1965

\* \* \* \* \*

#### SEC. 428. FEDERAL CONSOLIDATION LOANS.

##### (a) Agreements With Eligible Lenders.—

###### (1) Agreement required for insurance coverage.—\* \* \*

\* \* \* \* \*

*(C) made under part D of this title, except that loans made under such part shall be eligible student loans only for consolidation loans for which the application is received by an eligible lender during the period beginning on the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and ending on October 1, 1998;*

**[(C)]** *(D) made under subpart II of part A of title VII of the Public Health Service Act; or*

**[(D)]** *(E) made under subpart II of part B of title VIII of the Public Health Service Act.*

##### (b) Contents of Agreements, Certificates of Insurance, and Loan Notes.—

###### (1) Agreements with lenders.—\* \* \*

\* \* \* \* \*

*(I) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender before the date of enactment of the Emergency Student Loan Consolidation Act of 1997, or on or after October 1, 1998, that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; [or]*

*(II) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender on or after the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and before October 1, 1998, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 428 or Federal Direct Stafford Loans for which the borrower received an interest subsidy under section 455; or*

**[(II)] (III)** by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I) or (II);

\* \* \* \* \*

(6) *Nondiscrimination in loan consolidation.*—An eligible lender that makes consolidation loans under this section shall not discriminate against any borrower seeking such a loan—

(A) based on the number or type of eligible student loans the borrower seeks to consolidate;

(B) based on the type or category of institution of higher education that the borrower attended;

(C) based on the interest rate that is authorized to be collected with respect to the consolidation loan; or

(D) with respect to the types of repayment schedules offered to such borrower.

(c) **PAYMENT OF PRINCIPAL AND INTEREST.**—

(1) **INTEREST RATES.**—(A) Consolidation loans made under this section shall bear interest at rates determined under subparagraph **[(B) or (C)] (B), (C), or (D)**. For the purposes of payment of special allowances under section 438(b)(2), the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.

\* \* \* \* \*

(D) A consolidation loan for which the application is received by an eligible lender on or after the date of enactment of the Emergency Student Loan Consolidation Act of 1997 and before October 1, 1998, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 427A(f), except that the eligible lender may continue to calculate interest on such a loan at the rate previously in effect and defer, until not later than April 1, 1998, the recalculation of the interest on such a loan at the rate required by this subparagraph if the recalculation is applied retroactively to the date on which the loan is made.

\* \* \* \* \*

#### **SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.**

(a) **ADMINISTRATIVE EXPENSES.**—

(1) **IN GENERAL.**—Each fiscal year, there shall be available to the Secretary from funds not otherwise appropriated, funds to be obligated for—

(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part, and

(B) administrative cost allowances payable to guaranty agencies under part B and calculated in accordance with paragraph (2), not to exceed (from such funds not otherwise appropriated) **[\$532,000,000] \$507,000,000** in fiscal year 1998, \$610,000,000 in fiscal year 1999, \$705,000,000 in fiscal year 2000, \$750,000,000 in fiscal year 2001, and \$750,000,000 in fiscal year 2002. Administrative cost allowances under subparagraph (B) of this paragraph shall

be paid quarterly and used in accordance with section 428(f). The Secretary may carry over funds available under this section to a subsequent fiscal year.

\* \* \* \* \*

**SEC. 475. FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS.**

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—\* \* \*

\* \* \* \* \*

(c) PARENTS' AVAILABLE INCOME.—

(1) IN GENERAL.—The parents' available income is determined by deducting from total income (as defined in section 480)—

(A) \* \* \*

\* \* \* \* \*

(D) an income protection allowance, determined in accordance with paragraph (4); **[and]**

(E) an employment expense allowance, determined in accordance with paragraph (5)**[.]**; and

(F) *the amount of any tax credit taken by the parents under section 25A of the Internal Revenue Code of 1986.*

\* \* \* \* \*

(g) STUDENT CONTRIBUTION FROM AVAILABLE INCOME.—

(1) IN GENERAL.—The student contribution from available income is equal to—

(A) \* \* \*

\* \* \* \* \*

(C) an allowance for social security taxes determined in accordance with paragraph (4); **[and]**

(D) an income protection allowance of \$1,750**[.]**; and

(E) *the amount of any tax credit taken by the student under section 25A of the Internal Revenue Code of 1986.*

\* \* \* \* \*

**SEC. 476. FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.**

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each independent student without dependents other than a spouse, the expected family contribution is determined by—

(1) adding—

(A) \* \* \*

\* \* \* \* \*

(b) FAMILY'S CONTRIBUTION FROM AVAILABLE INCOME.—

(1) IN GENERAL.—The family's contribution from income is determined by—

(A) deduction from total income (as defined in section 480)—

(i) \* \* \*

\* \* \* \* \*

(iv) an income protection allowance of—

(I) \$3,000 for single students;



(II) \$3,000 for married students where both are enrolled pursuant to subsection (a)(2); and

(III) \$6,000 for married students where one is enrolled pursuant to subsection (a)(2); **[and]**

\* \* \* \* \*

(vi) the amount of any tax credit taken under section 25A of the Internal Revenue Code of 1986; *and*

\* \* \* \* \*

**SEC. 477. FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.**

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—\* \* \*

\* \* \* \* \*

(b) FAMILY AVAILABLE INCOME.—

(1) IN GENERAL.—The family's available income is determined by deduction from total income (as defined in section 480)—

(A) \* \* \*

\* \* \* \* \*

(D) an income protection allowance, determined in accordance with paragraph (4); **[and]**

(E) an employment expense allowance, determined in accordance with paragraph (5); *and*

(F) *the amount of any tax credit taken under section 25A of the Internal Revenue Code of 1986.*

\* \* \* \* \*

**SEC. 480. DEFINITIONS**

As used in this part:

(a) TOTAL INCOME.—(1) \* \* \*

\* \* \* \* \*

(2) No portion of any student financial assistance received from any program by an **[individual, and]** *individual*, no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.), *and no portion of any tax credit taken under section 25A of the Internal Revenue Code of 1986*, shall be included as income or assets in the computation of expected family contribution for any program funded in whole or in part under this Act.

\* \* \* \* \*

(j) OTHER FINANCIAL ASSISTANCE; TUITION PREPAYMENT PLANS.—

(1) \* \* \*

\* \* \* \* \*

(4) *Notwithstanding paragraph (1), a tax credit taken under section 25A of the Internal Revenue Code of 1986 shall not be treated as estimated financial assistance for purposes of section 471(3).*

\* \* \* \* \*